2-27-1897

Additional judge of United States court in Indian Territory.

ADDITIONAL JUDGE OF UNITED STATES COURT IN INDIAN TERRITORY.

FEBRUARY 27, 1897.—Ordered to be printed, to accompany H. R. 10002.

Mr. PETTIGREW presented the following

MEMORIAL OF THE MEMBERS OF THE BAR OF MUSCOGEE AND THE NORTHERN DISTRICT OF THE INDIAN TERRITORY, TOGETHER WITH LETTERS FROM JUDGES AND OTHER PROMINENT CITIZENS OF THE TERRITORY, PRAYING FOR HE APPOINTMENT OF AN ADDITIONAL JUDGE OF THE UNITED STATES COURT FOR THE TERRITORY.

MUSCOGEE, IND. T., *January 30, 1897.*

At a meeting of the members of the bar of Muscogee and the northern district of the Indian Territory, at the United States court room in Muscogee on January 28, 1897, the Hon. James M. Shackelford was appointed chairman, and James A. Winston, clerk of the court, was appointed secretary.

The following memorial to Congress in favor of the appointment of an additional judge of the United States court for the Indian Territory was unanimously adopted, and the judge of the court was requested to transmit the same to the chairmen of the Judiciary Committees of the Senate and House of Representatives of the Congress of the United States:

To the Senate and House of Representatives of the United States of America:

The members of the bar of Muscogee and of the northern district of the Indian Territory respectfully petition Congress for the appointment of an additional judge of the United States court in the Indian Territory, and submit the following facts which show the imperative necessity which now exists for the passage of Senate bill No. 3513, introduced by Senator Hoar, to authorize the appointment of an additional judge for the United States court in the Indian Territory.

On the first day of September, 1896, complete criminal jurisdiction in all cases was conferred upon the United States courts in the Indian Territory, and the jurisdiction theretofore exercised over cases arising in the Indian Territory by the United States court for the western district of Arkansas, at Fort Smith, Ark., and the United States court for the eastern district of Texas, at Paris, Tex., was abolished.

The report of Attorney-General Harmon for the fiscal year ending June 30, 1896, shows that the expenses of the United States courts for the western district of Arkansas and the eastern district of Texas,

incurred and paid during the fiscal year ending June 30, 1896, were as follows:

Western district of Arkansas	$302,157.72
Eastern district of Texas	214,429.61
Total	587.33

This statement does not exhibit the total expenses for the year, it only shows the expenses incurred and paid in that year; but as the accounts at the close of the year were not paid until after the expiration of the fiscal year, the sum paid after that time would be carried into the next report of the Attorney-General. That report will not be published until next year, but the expenses incurred in 1896 and paid after June 30, 1896, may be estimated by reference to the amount of expenses incurred in the year 1895, but paid in the year 1896, which expenses were as follows:

Western district of Arkansas	$49,955.43
Eastern district of Texas	71,626.26

These two amounts added to the amount of expenses incurred and paid in the year will aggregate $638,168. This amount is approximately correct and shows the total expense to the Government for maintaining the two courts indicated for year ending June 30, 1896.

Those best informed as to the business transacted in these courts are of the opinion that at least 80 per cent of the cases tried and disposed of at Fort Smith, Ark., and Paris, Tex., came from the Indian Territory. If we deduct, therefore, 20 per cent of the expenses of those courts from the total amount of such expenses, it will be seen that there remains an expenditure of $510,535 as the total expense to the Government on account of cases from the Indian Territory disposed of at Fort Smith, Ark., and Paris, Tex., during the last fiscal year.

When the cases of which those courts had obtained jurisdiction prior to September 1, 1896, shall have been disposed of, that entire expense will be saved to the Government, except in so far as the expenses of the courts in the Indian Territory will be increased by reason of the increased jurisdiction conferred upon those courts, which will not exceed $100,000 a year.

The number of criminal cases disposed of during the fiscal year ending June 30, 1896, at Fort Smith, Ark., and Paris, Tex., was as follows:

At Fort Smith, Ark	816
At Paris, Tex	386
Total	1,202

At least 80 per cent of these cases, or 962, came from the Indian Territory. That number of criminal cases is more than one judge can possibly dispose of in one year if he should hold court for the trial of criminal cases only every working day in the year.

It must be remembered that these are all felony cases. The number of murder cases at Fort Smith was greater than in any other criminal court in the United States. There were nine indictments for murder found at the December term of court at Muscogee, and they will be for trial at Muscogee at the next May term of court at that place.

Before the increased jurisdiction was conferred upon the United States courts in the Indian Territory, there was more business in those courts than the three judges could possibly dispose of.

The increased jurisdiction which took effect on the 1st of September, 1896, will impose an amount of business upon the United States courts in the Indian Territory greater than one judge can possibly consider and dispose of.

The necessity, therefore, for an additional judge ought to be conceded by everyone.

By a recent act of Congress, appeals from citizenship cases, decided by the Dawes Commission and by the tribal citizenship tribunals, were allowed to the United States courts in the Indian Territory. Appeals have been taken in several hundred cases. In the northern district, in which the Cherokee Nation is situated, 296 appeals have been taken in citizenship cases. The applications embraced in each appeal will average about fifteen persons to each case. In the northern district the number of persons interested in these appeals and whose citizenship depends upon the decision of the court is about 4,440. Fifty-three come from the Creek Nation and 243 cases from the Cherokee Nation.

The Dawes Commission and the tribunals of the Five Civilized Tribes did not submit written opinions in these cases. The only order of the commissions was "rejected" or "allowed." It will be incumbent, therefore, upon the United States court to give all of the cases a careful consideration.

In the Cherokee Nation the subject of citizenship has been one of the most important questions which has agitated that nation during the past fifteen or twenty years, and as the decision of the United States court in these cases is final, the decision in each case should be accompanied by a written opinion, giving the reasons of the court for the decision rendered.

In the other districts of the Indian Territory the appeals are not so numerous. The most of the citizenship cases arose in the Cherokee Nation. In all of these cases many intricate questions are involved and the facts are numerous and conflicting.

An early decision in these appealed cases is required on account of the probable allotment of the lands to individuals, and no allotment can take place until the citizenship rolls have finally and authoritatively been completed.

These cases in the northern district of the Indian Territory are so numerous and so important that six months' time of any judge would scarcely be sufficient for the purpose of giving them the careful and exhaustive examination which their importance requires.

The business which has accumulated in the northern district of the Indian Territory is so great that it is utterly impossible for one judge to give it proper attention. At the recent December term of court at Muscogee, the criminal business was so great that no time could be given to the civil cases. There were 177 cases continued until the May term of court, which ought to have been disposed of at the December term of court, and which were continued for want of time to try them.

The number of civil cases pending at Muscogee on January 1, 1897, was 468, and in the northern district 744.

The number of criminal cases pending at Muscogee on January 1, 1897, was 196, and in the northern district 350.

Total civil and criminal cases pending in the northern district of the Indian Territory on January 1, 1897, 1,094.

There were also pending in the northern district of the Indian Territory 207 probate and guardianship cases, the United States court having jurisdiction in all matters of administration and guardianship.

The number of cases disposed of in the northern district of the Indian Territory during the six months ending December 31, 1896, was as follows:

Criminal cases	209
Common-law and chancery cases	253
Total	462

The number of cases disposed of in the northern district of the Indian Territory during the year ending June 30, 1896, was as follows:

Civil cases	390
Criminal cases	296
Total	686

The number of cases pending in the northern district of the Indian Territory on June 30, 1896, was as follows:

Civil cases	763
Criminal cases	209
Total	972

It has already been shown that there were pending in the northern district of the Indian Territory on January 1, 1897, 1,094 civil and criminal cases, which show that there were 122 cases more on the dockets on January 1, 1897, than were pending at the end of the six months preceding, and that the business is increasing rather than being diminished.

Unless another judge is appointed no civil cases can be tried at Muscogee hereafter. If the increase of criminal business is as great at Vinita as it has been at Muscogee since the 1st of September, 1896, there will be no time for civil trials at Vinita after the February term, 1897.

Persons charged with crime are frequently kept in jail in the northern district awaiting trial over a year.

The jail is overcrowded and the expense of feeding and guarding prisoners is much greater than it would be if criminal cases could be promptly tried.

The expense of an additional judge would be small when compared with the expense incurred in feeding and guarding prisoners and paying witnesses awaiting trials that could be had if the court had time to dispose of the cases.

The December term of the United States court at Muscogee was compelled to adjourn January 29, in order to enable the judge to attend the court of appeals at South McAlester, and prepare for the February term of court at Vinita, Ind. T., which begins on the second day of that month. The December term of court at Muscogee was interrupted by adjournment Christmas Day and New Year's Day, and by a session of the court of appeals for one week at South McAlester. The business transacted during the term was as follows: Seventy-six persons were sentenced to terms in the penitentiary; 15 persons were given jail sentences; fines were imposed on 10 persons; 21 cases were tried in which there were acquittals or the case was dismissed or there was a mistrial; there were 41 cases in which the grand jury ignored true bills; 177 cases were continued until the May term of court at Muscogee, for want of time to consider them, and no time whatever was given to the trial of civil business.

The three judges of the Indian Territory constitute a court of appeals, which meets twice a year at South McAlester. All appeals from the courts in the several districts are taken to this court Its business is

increasing continually, and much time is required in hearing arguments and writing opinions in appealed cases.

In view of the great amount of criminal and civil business in the Indian Territory, and especially in the northern district, there is imperative necessity for another judge of the United States court in the Indian Territory.

The bill now pending, Senate No. 3513, which authorizes the appointment of a new judge, should be passed during the present session, in order that the incoming President may promptly appoint another judge.

The statistics used in this statement are taken from the report of Attorney-General Harmon for the fiscal year ending June 30, 1896, and from the records of the United States court in the northern district of the Indian Territory.

And your petitioners will ever pray.

JAMES M. SHACKELFORD, *Chairman.*
JAMES A. WINSTON, *Secretary.*

UNITED STATES COURT IN THE INDIAN TERRITORY,
CENTRAL DISTRICT,
South McAlester, Ind. T., February 10, 1897.

SIR: Your favor, addressed to Hon. Charles B. Stuart, as judge of the United States court at South McAlester, has been handed by him to me, who, upon the resignation of Judge Stuart in 1895, succeeded him in the position of judge of the United States court for the central district of the Indian Territory.

Referring to your request for information as to the number of criminal cases tried in the court since it was created, the nature of each offense, and the result of each trial, I beg to call your attention to the fact that by the act of Congress passed March 1, 1895, the Indian Territory, which had theretofore consisted of a single judicial district with three divisions and with a single judge, was divided into three districts, with three judges. Judge Stuart, having been before the passage of this act judge of the court for the entire Territory, became thereafter judge of the central district. By the terms of this act it was provided that sessions of the court for the central district should be held at three points therein in addition to the terms at South McAlester, where court had before the act been held. Assuming that your inquiry is intended to ascertain the amount, character, and disposition of the criminal business that has been transacted by the court in the central district since March 1, 1895, I have directed the clerk to make up a statement as soon as possible and to forward it to you. It may be that he will find it necessary to communicate with his deputies at the other three points in this district before he will be able to send this information.

On September 1, 1896, the jurisdiction as to certain classes of crimes committed in the Indian Territory which had theretofore been vested in the United States courts at Paris, Tex., and Fort Smith, Ark., ceased, and the United States courts in the Indian Territory have had exclusive jurisdiction of all violations of the criminal law, except when committed by Indians against Indians, since that date. That change, in my judgment, has been most beneficial in the way of securing a better enforcement of the criminal law. The people who, under the old system, felt a spirit of hostility to the outside courts, and from fear of expense and loss of time in attending them gave little or no aid to the officers of the law in discovering crime and apprehending its perpetrators,

have responded most readily to the demands of the situation with jurisdiction vested in courts in their midst, have cooperated with the executive officers, have been rigid in upholding the law as jurors, and, from a better knowledge of witnesses appearing before them than could be possibly had by jurors sitting in the United States courts in the States, have been better able to arrive at just conclusions in cases tried. The moral effect of grand juries sitting in the local communities has been great and the result has been a marked improvement in the conditions obtaining in the Territory.

Your question as to whether the jurisdiction of the Indian courts should be abolished I am constrained to answer in the affirmative. As a ground for this conviction I will state that these courts have ceased to exercise a restraining influence upon those subject to their jurisdiction in the commission of offenses. The result is that those members of the tribes who are disposed to crime, knowing fully the limits of the jurisdiction of the United States court, plunder and steal from other members of their tribes without fear. They drive off cattle and horses and sell them to white men. They commit other forms of trespass upon the rights of their fellows, secure in the belief that if aligned with certain influences, sometimes political and sometimes of a different sort, they will be free from punishment. As an illustration of this I will send you the testimony of a negro, entitled to the rights of membership in the Choctaw Nation, taken in an examining trial about a week since. You will see from that testimony that he and another negro, with like rights of citizenship in the Choctaw Nation, assassinated, under circumstances of indescribable brutality, another negro member of the tribe, being hired to do so by a white man against whom the deceased was a witness in the United States court.

The consideration of the murder was the promise of $100 each to the assassins. You will note that this negro stated that they were willing to commit the offense because they were of the impression that the Choctaw courts would have jurisdiction, and that they would have no trouble in escaping punishment. In this case the jurisdiction of the United States court arises under the act of Congress providing that for the murder of a member of any one of the Indian nations who had been a posse man or guard in the execution of process of the United States courts, such court should have jurisdiction. The deceased had been such posse man, but this fact was unknown to his murderers, and, without fear, they killed him with intent to destroy his testimony as a witness in the United States court. Another witness in this case testified that he gave information leading to the apprehension of the murderers when he learned that the trial would be in the United States court, when he would not have done so had the case been triable in the Choctaw courts, for the reason that had he done so he himself would doubtless have been killed. A white man was indicted in my court for larceny upon the testimony of two negro witnesses, and before his trial, being a man of influence, was able to procure the indictment and conviction of one of the negroes in the Choctaw court, thereby rendering him incompetent to testify.

These instances will make plain to you how the protection of both Indians and the whites is hindered by reason of the system in force here, and how even the most ignorant are informed as to the condition of affairs and act upon it. If you will examine the record in the case of Talton *v.* Mays, lately decided by the Supreme Court of the United States, but not yet reported, you will find that in the Cherokee courts a member of that tribe was sentenced to death, upon an indictment

rendered by a grand jury of five persons, under a law that had been repealed before the alleged grand jury was organized, and that the United States courts could not take cognizance of the matter, because the question whether or not there was an error was within the final determination of the Cherokee court. Two other men, one of whom was a citizen of the United States who had intermarried into the tribe, were sentenced to death under an indictment tainted with the same illegality, but both died in prison pending the appeal to the Supreme Court of the United States.

Thus it is possible, under the existing system, to hang not only Indians, but white men, under proceedings that have not the least semblance of legality. Construing section 905 Revised Statutes of the United States, it is held by the United States court of appeals for the eighth circuit, that the proceedings and judgments of the courts of the Indian nations are upon the same footing and entitled to the same faith and credit as the proceedings and judgments of the courts of the Territories of the Union. (Davidson *v.* Gibson, 12 U. S. App., 164; Stanley *v.* Roberts, 59 Fed. Rep., 836.) Under the rule established by the Supreme Court of the United States, judgments of the courts named in section 905 are not impeachable in a collateral attack, except upon the ground that the court had no jurisdiction of the case or that the judgment rendered was beyond its power. They can not be inquired into upon the ground of fraud. The result is that judgments in civil proceedings procured in the Indian courts by admitted corruption must be upheld and enforced when made the basis of right in subsequent proceedings in the United States court.

In the case of Stanley *v.* Roberts, supra, which was a contest over the ownership of a mine, judgment for the mine and for $30,000 damages was rendered against one Phillips, a United States citizen who had intermarried into the tribe, when the ground of damage alleged and proven would not have warranted a recovery for a tithe of that sum. In the case of Connels *v.* Shannon (U. S. Appeals), a judgment in like amount was rendered in the Creek court against Shannon, who was an intermarried citizen of the Creek Nation, under circumstances that would not have warranted a recovery for one-tenth of that sum in other courts. In my own court a judgment was rendered in favor of one intermarried United States citizen for the possession of a farm, against another intermarried United States citizen—jurisdiction of the United States court arising from the joinder in the suit of tenants who were citizens of the United States. After the determination of the matter in my court, the defeated party went into the Choctaw courts and without a hearing obtained a judgment for the same farm. This judgment he used as a means by which he compelled the other party to surrender the damages that had been awarded him in the action in the United States court. These illustrations are a few of the many that I might give you.

In the matter of the administration of estates of Indian decedents, the vices are indescribable. As a rule, an administration means an utter spoliation of the heirs and of the creditors. It is almost a matter of course that the heirs will get nothing. If the creditors are United States citizens they fare no better than the heirs. They have no means by which they can reach the assets of the decedent or control of the administration, jurisdiction thereof being in the Indian courts, and they being excluded therefrom. These suggestions, which I might elaborate at great length, will sufficiently indicate the grounds of my opinion touching your question. If the jurisdiction of the Indian courts

is continued, I beg that you will so modify that section of the statute to which I have called your attention as that the United States courts will not be compelled to enforce, in collateral proceedings, the judgments of the Indian courts, where the jurisdiction of such is shown, but that inquiry may be made into the question of fraud in the procurement of such judgments. Constrained by the rule now operative in the Indian Territory, I have enforced judgments of the Indian courts when I felt that the judicial office was outraged in being compelled to do so.

Though the suggestion may not be germane to your inquiry, yet I trust you will permit me to say that the number of the United States judges in the Indian Territory should be increased. Memorials and statements, showing the condition of affairs here, will be presented you by others. I will content myself by simply saying that it is impossible for three men to do the work now required of the judges in this jurisdiction, and that if the jurisdiction of the Indian courts is conferred upon the United States courts the work will, of necessity, be largely increased.

I have the honor to be, very respectfully, yours,

YANCEY LEWIS, *Judge.*

Hon. R. F. PETTIGREW,
Chairman Committee on Indian Affairs,
United States Senate, Washington, D. C.

UNITED STATES COURT,
NORTHERN DISTRICT OF INDIAN TERRITORY,
Muscogee, Ind. T., February 12, 1897.

MY DEAR SENATOR: Your letter of the 6th instant is received, in which you ask for information as follows:

First. The number of criminal cases tried in your court since it was created, the nature of each offense, and the result of each trial.

Second. My opinion regarding the advisability of enlarging the jurisdiction of the United States court in the Indian Territory, so as to embrace all questions between Indians, as well as between Indians and whites, and whether the jurisdiction of the Indian courts should be abolished.

I will comply with your request as to the first proposition as far as the information is in my possession.

A United States court in the Indian Territory was first established by the act of March 1, 1889. This act authorized the appointment of one judge, and fixed one place, Muscogee, for holding court in the Indian Territory. The jurisdiction was limited in criminal matters to misdemeanors, no grand juries having been provided for. In civil cases the jurisdiction was complete. The Indian Territory then embraced all of what is now the Indian Territory and the Territory of Oklahoma. By the act of May 2, 1890, Oklahoma was separated from the Indian Territory, and the jurisdiction of the United States court was enlarged by extending certain portions of the statutes of Arkansas over the Indian Territory, and providing three places for holding court: Muscogee, South McAlester, and Ardmore.

The increased jurisdiction in criminal cases imposed an enormous amount of labor upon the judge of the United States court in this Territory. It had concurrent jurisdiction with the United States courts at Fort Smith, Ark., and Paris, Tex., in the enforcement of the law

prohibiting the introduction of intoxicating liquors, and of many other classes of cases punishable by imprisonment in the penitentiary.

By the act of March 1, 1895, the Indian Territory was divided into three judicial districts, and the appointment of two additional judges was authorized. The criminal jurisdiction was enlarged and a court of appeals established which is composed of the three judges of the several districts, and which occupies the same relation toward the Indian Territory which the supreme court of Arkansas does toward that State.

By a provision in the act of March 1, 1895, on the 1st day of September, 1896, all criminal jurisdiction theretofore exercised at Fort Smith, Ark., and Paris, Tex., was abolished, and complete civil and criminal jurisdiction was conferred upon the United States courts in the Indian Territory.

By the act of March 1, 1895, six United States commissioners were authorized to be appointed by the judges in each district. These commissioners have all the powers of commissioners in the States, and in addition thereto the powers and jurisdiction exercised by justices of the peace in the State of Arkansas. They have exclusive jurisdiction in civil cases where the amount in controversy is less than $100, and concurrent jurisdiction in civil cases up to $300 in actions founded upon contract. They have concurrent jurisdiction in criminal cases in all matters of misdemeanor to hear and determine them, and in felony cases they act as committing magistrates.

Since the organization of the courts in the Indian Territory reports have been made, as required by law, to the Department of Justice, as to the business transacted and the expense of the courts. If you will call upon the Attorney-General he will furnish you a statement in detail of the number of criminal cases tried in the United States court in the Indian Territory since it was created, the nature of each offense, and the result of each trial. I would gladly furnish you this information, but it is not in my possession. I can give you a general statement of the business transacted at Muscogee in the northern district of the Indian Territory.

Since the establishment of the court in 1889, 3,146 civil cases have been brought, and up to January 1, 1897, there were 468 civil cases pending on the docket, which shows that 2,678 civil cases have been disposed of during that time.

After the passage of the act of March 1, 1895, there were four places of holding court provided for in the northern district, and at the first term of court thereafter the cases on the Muscogee docket, the parties to which were nearer the other places of holding court, were transferred to those places, namely: Vinita, Tahlequah, and Miami, and since that time those cases have been disposed of at those places. The same may be said in reference to criminal cases, of which, on January 1, 1897, 4,013 had been brought at Muscogee since the establishment of the court, and on January 1, 1897, there were pending at Muscogee, 196 criminal cases, which shows that 3,817 criminal cases have been disposed of at Muscogee since the establishment of the court in 1889, which includes the number of cases transferred to the courts held at other places in the district.

By the act of March 1, 1895, United States commissioners were given concurrent jurisdiction with the United States courts to hear and determine all cases of misdemeanor. Prior to that time there were a great many misdemeanor cases disposed of in the United States court, but since that time very few misdemeanors have been tried in the

United States court, and the cases now pending are nearly all, or at least 90 per cent of them are, felony cases, or cases in which the punishment may be imprisonment in the penitentiary.

The abolition of the jurisdiction of the courts at Fort Smith, Ark., and Paris, Tex., as provided in the act of March 1, 1895, will relieve the courts at those places, hereafter, of all criminal business which came to them from the Indian Territory.

The report of Attorney-General Harmon for the fiscal year ending June 30, 1896, shows that the expenses of the United States courts for the western district of Arkansas and the eastern district of Texas, incurred and paid during the fiscal year ending June 30, 1896, were as follows:

Western district of Arkansas	$302,157.72
Eastern district of Texas	214,429.61
Total	516,587.33

This statement does not exhibit the total expenses for the year, it only shows the expenses incurred and paid in that year; but as the accounts at the close of the year were not paid until after the expiration of the fiscal year, the sum paid after that time would be carried into the next report of the Attorney-General. That report will not be published until next year; but the expenses incurred in 1896 and paid after June 30, 1896, may be estimated by reference to the amount of expenses incurred in the year 1895, but paid in the year 1896, which expenses were as follows:

Western district of Arkansas	$49,955.43
Eastern district of Texas	71,626.26
Total	121,581.69

These two amounts, added to the amount of expenses incurred and paid in the year, will aggregate $638,168. This amount is approximately correct and shows the total expense to the Government for maintaining the two courts indicated for the year ending June 30, 1896.

Those best informed as to the business transacted in these courts are of opinion that at least 80 per cent of the cases tried and disposed of at Fort Smith, Ark., and Paris, Tex., came from the Indian Territory. If we deduct, therefore, 20 per cent of the expenses of those courts from the total amount of such expenses, it will be seen that there remains an expenditure of $510,535 as the total expense to the Government on account of cases from the Indian Territory, disposed of at Fort Smith, Ark., and Paris, Tex., during the last fiscal year.

When the cases of which those courts had obtained jurisdiction prior to September 1, 1896, shall have been disposed of that entire expense will be saved to the Government, except in so far as the expenses of the courts in the Indian Territory will be increased by reason of the increased jurisdiction conferred upon those courts, which will not exceed $100,000 a year, in the opinion of those best informed on the subject.

The number of criminal cases disposed of during the fiscal year ending June 30, 1896, at Fort Smith, Ark., and Paris, Tex., was as follows:

At Fort Smith, Ark	816
At Paris, Tex	386
Total	1,202

It must be borne in mind, as stated above, that 80 per cent of the cases heretofore tried at Fort Smith, Ark., and Paris, Tex., must hereafter be tried in the Indian Territory.

This increase of jurisdiction renders it absolutely necessary that Congress should authorize the appointment of at least one additional judge in the Indian Territory, to be assigned to hold court where the business most requires it.

If Congress should enlarge the jurisdiction of this court so as to include any considerable portion of the jurisdiction now exercised by tribal courts, the services of a fifth judge would be absolutely necessary.

In reference to Senate bill 1833, entitled "An act to amend the act of March first, eighteen hundred and ninety-five, and other acts relating to the United States court in the Indian Territory, and for other purposes," I desire to call the attention of Congress to the necessity of its passage at once. This bill has already passed the Senate, and is now pending in the Judiciary Committee of the House of Representatives. Its passage would greatly facilitate the transaction of business. It was prepared by the three judges of the Indian Territory, after much consultation with the members of the bar of the Territory.

You ask my opinion regarding the advisability of enlarging the jurisdiction of the United States court in the Indian Territory, so as to embrace all questions between Indians, as well as between Indians and whites, and whether jurisdiction of Indian courts should be abolished.

While the jurisdiction now exercised by the United States court imposes much more business upon the judges than they are able to perform, if Congress will increase the number of judges and other officers necessary for the transaction of business, no greater reform or a more beneficent one could be enacted by Congress than that which would result from the entire abolition of the tribal courts, and the conferring upon the United States court of entire and complete jurisdiction over all persons in the Indian Territory in all cases, both civil and criminal.

The degree of civilization which has been attained by the citizens of the Five Civilized Tribes is far in advance of the crude and inefficient jurisdiction exercised by the tribal courts.

In the Cherokee Nation there are 9 district judges, who have jurisdiction in civil cases up to $100 and in cases of misdemeanor. They each receive a salary of $400 a year. There are 3 circuit judges who have civil and criminal jurisdiction except in capital cases, and they each receive a salary of $600 a year. There are 3 supreme judges, who receive a salary of $600 a year each. These supreme judges have appellate jurisdiction and original jurisdiction in capital cases. The salaries of these judges amount to $7,200 a year. There are 9 sheriffs at $400 each per year, and 9 prosecuting attorneys receiving the same salary, which increases the total cost of judges, prosecuting attorneys, and sheriffs to $14,400 a year for salaries. There are less than 40,000 persons subject to their jurisdiction. By the census of 1890 there were only 31,000 citizens of the Cherokee Nation. The judges are not required to be learned in the law, and many of them, even on the supreme bench, have no legal accomplishments whatever.

The Cherokee Nation has a prison at Tahlequah, which is also a penitentiary.

In the Creek Nation there are 6 district judges, who receive a salary of $400 each a year. There are 5 supreme judges, who each receive a salary of $200 a year. There are 6 prosecuting attorneys, who each receive a salary of $200 a year, and in addition to this salary they receive $25 for each person convicted. Instead of a sheriff or marshal, they have what are called "light-horsemen," who execute all the processes of the court; they are divided into six companies, one for each district, each company consisting of one captain and four privates; the

captains each receive a salary of $300 per year, and the privates receive a salary of $275 per year.

It is not required of these judges that they should be learned in the law, and few of them have ever read a law book.

The only punishment inflicted for crime in the Creek Nation is whipping on the bare back and death by shooting. For theft, the punishment for the first offense is fifty lashes on the bare back, for the second offense one hundred lashes on the bare back, and for the third offense death by shooting. As stated before, they do not imprison their convicts. Sentence is executed immediately, unless it be a murder case, when the accused is held for a short time under guard.

In the Seminole Nation there are no courts. The council, which consists of 43 persons, hears and determines all controversies, civil and criminal, and imposes punishment by a majority vote. The accused is either whipped or shot. When whipping is ordered, the sentence is immediately carried into effect by the light-horsemen, five in number, each of whom inflict upon the victim ten lashes. The death penalty is executed by the light-horsemen within a few days after conviction, the prisoner being kept under guard in the meantime.

I can not speak so fully in reference to the jurisdiction and judicial officers of the courts in the Choctaw and Chickasaw nations, as they are not in the district in which I preside.

The judicial anomaly existing in the Indian Territory is without any precedent in civilized countries. There are two sets of laws operating upon two classes of people who live in the same locality. These persons, some under one system of laws and some under another, are in daily contact with each other. They form business partnerships, buy and sell to each other, belong to the same churches and same benevolent societies, marry and intermarry, and in all repects and appearances are alike, except that they are classed as citizens of the Indian nations (90 per cent of whom are white people) and citizens of the United States, and are subject to different laws and different jurisdictions for their enforcement.

It is true that some of the laws of the United States, notably the law prohibiting the introduction and sale of intoxicating liquor, operate upon people, citizens, and noncitizens alike, but jurisdiction in such cases only serves to complicate and embarrass the courts in the administration of the law. It is most remarkable that so few conflicts of jurisdiction have heretofore arisen; this results from the fact that the officers of each of the courts have not endeavered to transcend their power, but in all questions of doubt have yielded the jurisdiction to the other court.

It may be said that the abolition of the Indian courts would violate the treaties heretofore adopted between the Indian tribes and the United States. Those treaties were mere legislative enactments, and were well enough at the time they were made. The Indians were then isolated, and but few white men were in their midst. It was highly proper that they should make their own laws and execute them in their own way; but by their own legislation they have admitted into the Indian Territory a large number of citizens of the United States, who are not subject to their laws.

The citizens of the United States in the Indian Territory outnumber the citizens of the Indian tribes by at least four to one, and perhaps five to one.

The Indians have advanced to a high state of civilization, and have entirely outgrown the crude, inefficient, and even barbarous laws which

they have enacted heretofore. Their systems are exceedingly expensive per capita, and notoriously inefficient.

While the laws of the United States are vigorously enforced against its citizens as far as the limited force of officers allowed will admit, yet the citizens of the nations in many cases go unwhipped of justice who are guilty of crimes for which, if they were citizens of the United States, or subject to the jurisdiction of the United States courts, they would be promptly and vigorously prosecuted.

I am confident that the most enlightened citizens of the Indian nations as a rule earnestly desire that full and complete jurisdiction should be given to the United States courts over controversies between Indians.

Indian citizens are competent jurors in the United States court. In this district the grand and petit juries are generally composed of as many citizens of the Indian nations as of noncitizens. At one term of court at Tahlequah every member of the grand jury was a citizen of the Cherokee Nation, and 15 of them were citizens by blood. The Indians have proven themselves competent and reliable jurors, and are seldom challenged on account of their nationalty.

There is no principle so often commended by politicians and statesmen or none so favorably commented upon by the courts as this, "That all persons should be equal before the law." That principle is violated by the conditions which exist in the Indian Territory.

One class of people is subject to one system of laws and another class to another system. These systems are very different in criminal cases and impose different pains and penalties, and in civil cases afford different remedies. Yet all these people live in the same locality and are subject to such laws as the United States may make, in its discretion, for their government.

Every provision of law for the Indian Territory which puts the Indians under a different system of laws from the system which governs the white people is the result of Congressional action. Congress has made and Congress can unmake these inequalities and inconsistencies.

A proper regard for the best interest of society, and especially for the best interest of the citizens of the Indian tribes, demands the abolition of the tribal courts and the passage of an act subjecting all persons in the Indian Territory to the same system of laws and entitling them to the same rights and protection under the law.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM M. SPRINGER.

Hon. R. F. PETTIGREW,
Chairman Senate Committee on Indian Affairs,
Washington, D. C.

SOUTH MCALESTER, IND. T.,
February 9, 1897.

MY DEAR SIR: Your letter to me, asking for certain information with reference to the United States courts in the Indian Territory, was received on yesterday. I handed it to Judge Yancy Lewis, who is my successor.

I served as judge of the United States court for the entire Indian Territory for about three years. I resigned some months ago and Judge Lewis was appointed in my stead.

As a resident of this country, however, as a practicing lawyer, and as one who has been very closely identified with the judicial government of this Territory, I shall embrace this opportunity to make a few suggestions with reference to the subject-matter of your letter.

I had not served twelve months upon the bench in this Territory before I became convinced that the dual government which the United States has attempted to maintain here was a great mistake; and that instead of building up, it had a tendency to retard the progress and civilization of our people.

No such anomaly exists anywhere else; and I believe that the hour has struck, and the time is ripe for change. I am convinced that the Indian courts are a complete failure, and that they ought to be totally abolished.

This ought to be done, not only that justice may be reached, but for the present and future good of the Indian himself. When the Indians determined their controversies among themselves, according to their customs and unwritten laws, there was something sturdy and honest about their methods and judgments. But the present judicial system among the Indians in this country is founded upon a written constitution and written laws. Their statutes are copied largely from the adjoining States, and their methods of procedure originated largely in the same way.

It would seem, therefore, that in order for justice to be reached through the aid of this machinery, judges and officers who make, expound, and enforce the laws ought at least to have some legal training. The fact is, however, that there are few, if any, of the judicial officers among the Indians who have any legal knowledge, or who have given any thought to the reason and philosophy of the laws which govern them. Their judges are unlearned; their courts are loose, irregular, and dreadfully uncertain, and I never had an Indian judgment brought before me for enforcement or revision which gave any sign that it had been rendered by a court of justice. The whole thing is a farce from beginning to end. These Indian courts seem to be managed and controlled by a few influential Indians; and I have heard more than one Indian judge testify in my court that all judicial officers in his tribe had their price. The Indian who kills his Indian neighbor, or who steals his neighbor's hog, has no fear of his native court. This state of affairs has affected seriously the public morality of these people, and, in my judgment, is doing them untold injury. The estates of dead persons among the Indians are looked upon as lawful prey, and it is seldom that the widow and the orphan ever realize anything. The only remedy is to put white people and Indians under the same government and control, and make them subject to the jurisdiction of the same court.

The Federal courts in this Territory have endeavored to protect the Indian, and all doubts have been resolved in his favor. Let all controversies be tried by the United States court, and in a few years Indians themselves will realize the great benefits which will accrue to them.

I could relate to you, if it were necessary, a great many instances which have come under my knowledge officially which demonstrate the correctness of what I have said. I believe that if the lands in this Territory were allotted; if the jurisdiction of the Indian courts were taken away entirely, as above suggested, and some sort of intelligent townsite and lease law adopted, that the Indian question would in a few years settle itself, and the Indians would be peacefully absorbed into the body politic of the Federal Government.

I beg your pardon for having trespassed so far upon your time.

Very respectfully, yours,

CHAS. B. STUART.

Hon. R. F. PETTIGREW,
Chairman Committee on Indian Affairs,
United States Senate, Washington, D. C.

UNITED STATES COURT,
NORTHERN DISTRICT OF INDIAN TERRITORY,
Muscogee, Ind. T., February 13, 1897.

MY DEAR SENATOR: I see from the newspapers this morning that the legislation in reference to the Indian Territory will be incorporated as an amendment to the Indian appropriation bill, and that the appointment of two additional judges will be authorized for the Indian Territory.

In my letter of yesterday I gave some statistics showing the necessity at this time for an additional judge in the Indian Territory. I desire to add to those statements.

The necessity for additional judges in the Indian Territory will be conclusively demonstrated by comparing the business transacted by the courts therein with the business transacted in other courts of the United States. During the year ending June 30, 1896, the number of civil and criminal cases disposed of or determined finally in the United States court for the Indian Territory, having three judges and holding court at thirteen different places in the Indian Territory, was as follows:

Civil cases	1,446
Criminal cases	876
Total	2,325

During the same year the number of civil and criminal cases disposed of or terminated in the United States courts in the six New England States was as follows:

Civil cases	440
Criminal cases	845
Total	1,285

In those States there are six district judges and two circuit judges.

During the same year the number of civil and criminal cases disposed of or determined finally in the United States courts in the States of Illinois, Indiana, and Wisconsin, which constitute the seventh circuit, was as follows:

Civil cases	767
Criminal cases	1,375
Total	2,142

In those States there are five district judges and three circuit judges. One of the circuit judges was authorized by the last Congress on the ground that there was imperative necessity for another judge.

But the business transacted in the United States courts of those three great States was not as great during the last fiscal year, by 183 cases, as that transacted by the three judges in the Indian Territory during the same time.

The business transacted in the United States courts in the six New England States, having eight Federal judges, was only one-half as great during the last year as that transacted in the Indian Territory, where there are but three judges.

If judges were allowed in accordance with the business transacted, and if we accept the business in the seventh circuit as the standard, then there should be allowed eight judges in the Indian Territory; and if the business transacted in the New England States should be adopted as the standard, there should be allowed sixteen judges in the Indian Territory.

It may be said that the cases here are unimportant and require but little time. This is a mistake. The criminal cases are much more important, usually, than those tried in the States I have mentioned, and the civil suits, while not generally covering so large amounts, are generally contested as vigorously and persistently as are cases of like character in the States.

The three judges in the Indian Territory constitute a court of appeals, which meets at least twice a year. The business of this court is becoming very important, and is requiring much time and careful investigation on the part of the judges composing the court of appeals. The cases disposed of in the court of appeals do not enter into the statistics to which I have referred.

I beg pardon for again writing you upon this subject in view of the long letter which I addressed to you on yesterday; but knowing the great interest which you take in the subject, I assume that you will be interested in any facts bearing upon the subject.

I have obtained this information from the report of the Attorney General for the year ending June 30, 1896.

I have the honor to be, very respectfully, your obedient servant,

WM. M. SPRINGER.

Hon. R. F. PETTIGREW,
Chairman Senate Committee on Indian Affairs,
Washington, D. C.

UNITED STATES COURT,
NORTHERN DISTRICT OF INDIAN TERRITORY,
Vinita, Ind. T., February 16, 1897.

MY DEAR SENATOR: Since writing you heretofore I have received from the clerks of the several districts in the Indian Territory a statement of the citizenship cases which have been, up to this time, appealed from the Dawes Commission and from the tribal citizenship courts to the United States court. The clerks have estimated carefully the number of persons covered by each appeal, and have reported the number of cases appealed, and their estimate of the number of persons covered by these cases is as follows:

Northern district 310 appeals, averaging 15 persons each, or 4,650 persons.

Central district, 241 appeals, averaging 7½ persons each, or 1,807 persons.

Southern district, 151 appeals, averaging 10 persons each, or 1,510 persons.

Total number of appeals, 702. Total number of persons claiming citizenship in these cases, 7,967.

It is fair to estimate that each claimant, if allowed citizenship, would, on an average, receive 200 acres of land, when the lands are allotted, and that these lands are worth $10 an acre.

On this estimate there would be 1,593,400 acres of land, and $15,934,000 involved in these appealed cases.

I have also received from the clerk of the court of appeals a statement as to the number of the judges of tribal courts and their salaries in the Choctaw and Chickasaw nations.

That statement, in connection with the statement heretofore made in reference to the Cherokee and Creek nations, will show that the judges

of the tribal courts in the four nations mentioned and their salaries are as follows:

Cherokee Nation:	
Nine district judges, at $400 per year	$3,600
Three circuit judges, at $600 per year	1,800
Three supreme judges, at $600 per year	1,800
Total	7,200
Creek Nation:	
Six district judges, at $400 per year	2,400
Five supreme judges, at $200 per year	1,000
Total	3,400
Choctaw Nation:	
Three district judges, at $600 per year	1,800
Seventeen county judges, at $400 per year	6,800
Total	8,600
Chickasaw Nation:	
One district judge, at $600 per year	600
Four county judges, at $400 per year	1,600
Total	2,200

Total, 51 judges, receiving salaries amounting to $21,400.

This shows the number of judges of the tribal courts and the salaries received in the four nations mentioned.

In the Cherokee Nation there are 9 sheriffs, who each receive a salary of $400 per year, and 9 prosecuting attorneys, who each receive a salary of $400 per year; making a total of salaries for sheriffs and prosecuting attorneys in the Cherokee Nation of $7,200 per year.

In the Creek Nation there are 6 prosecuting attorneys, who each receive a salary of $200 per year, and in addition $25 for each conviction. The light-horsemen who take the place of sheriffs and marshals in the Creek Nation are divided into six companies; each company consists of one captain and four privates; the captains each receive a salary of $300 per year and the privates each receive a salary of $275 per year; making an aggregate paid to prosecuting attorneys and light-horsemen in the Creek Nation of $9,600 per year.

I have no statement as to the salaries paid sheriffs and prosecuting attorneys in the Choctaw and Chickasaw nations, but if the sheriffs receive the same salaries as the captains of the light-horsemen in the Creek Nation, which is $300 per year, at that rate the sheriffs in the Choctaw and Chickasaw nations would receive salaries amounting to $6,300 per year.

The prosecuting attorneys in the Choctaw and Chickasaw nations receive in salaries, estimated, $4,200.

This shows that the judges, prosecuting attorneys, sheriffs, and light-horsemen in the Cherokee, Creek, Choctaw, and Chickasaw nations receive annual salaries amounting to $48,700.

As stated heretofore, in the Seminole Nation there are no judges. The nation being very small, the judicial business is transacted by the council. There are certain light-horsemen, however, who receive salaries. If we estimate the judicial salaries in the Seminole Nation at $1,300, the total salaries received by the judges and officers of the court in the Five Civilized Tribes will amount to $50,000 per year. This does not include the expense of guards, jurors, and witnesses, nor

the compensation of clerks. I have no data from which to make an estimate of such expense.

As there are less than 75,000 persons subject to the jurisdiction of the tribal courts, it will be seen that the cost of administering justice in the Five Civilized Tribes is very large, compared with the population subject to their jurisdiction.

Imprisonment is not a punishment for crime except in the Cherokee Nation. In that nation there is a jail and penitentiary at Tahlequah, and persons found guilty of crime may be imprisoned therein. Persons convicted of capital offenses in the Cherokee Nation and condemned to death are executed by hanging.

In the other nations the punishment for crime is either whipping on the bare back or death by shooting.

In the Creek Nation the punishment for theft, which embraces all kinds of larcenies, is fifty lashes on the bare back for the first offense, one hundred lashes on the bare back for the second offense, and death by shooting for the third offense. I am not advised as to whether larceny is punished in the Choctaw, Chickasaw, and Seminole nations other than by whipping.

I beg pardon for troubling you with this voluminous statement; but I assume that the facts will be of interest in the discussion of the proposed measure abolishing the tribal courts.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM M. SPRINGER.

Hon. R. F. PETTIGREW,
Chairman Committee on Indian Affairs, United States Senate,
Washington, D. C.

UNITED STATES COURT,
INDIAN TERRITORY, SOUTHERN DISTRICT,
Ardmore, Ind. T., February 13, 1897.

DEAR SIR: Your letter of recent date came to this office while I was away from home holding court in a remote portion of the district; hence the delay in answering.

You ask me as to the amount and character of business transacted by the courts in the Indian Territory since they were established, and also as to my opinion on the question of abolishing the tribal courts and giving the United States courts here jurisdiction of all matters civil and criminal which arise in the Indian Territory. It will be impossible for me to give you all the data you want, within a reasonable time, as I do not have convenient access to the records. I can give you the work of the three districts for the last fiscal year, and I can refer you to the Attorney-General's report for the history of the work of these courts for the previous fiscal years. If I had the reports I would make the analysis for you myself.

You will remember that the first United States court established in the Indian Territory was provided for by the act of Congress of March 1, 1889, and was organized at Muscogee in the spring of that year, with limited jurisdiction, however. By the act of May 2, 1890, they divided the Territory into three judicial divisions, and established courts at South McAlester, in the Choctaw Nation, and Ardmore, in the Chickasaw Nation. March 1, 1895, Congress created three districts, the northern, central, and southern, and for the appointment of two additional judges; provided for the holding of court at four places in the northern

district, four in the central district, and five in the southern district. Judge Springer is on the bench in the northern district, Judge Lewis in the central district, and I am "holding the fort" in the southern district.

That act provided that on the 1st of September, 1896, the courts in the Indian Territory should have jurisdiction of all offenses and all causes of whatever character, except such as were cognizable in the tribal courts. Up to that date the courts at Fort Smith, Ark., and Paris, Tex., had exclusive jurisdiction of the higher class of felonies committed by or against any citizen of the United States.

The district courts in the Indian Territory now have jurisdiction of every character of crime or cause of action of a Federal nature, except in maritime and admiralty matters, and no such cases can arise in this country. In addition to this jurisdiction they have jurisdiction of every character of civil action, law or equity, or criminal prosecution which belong to the State courts of Arkansas. Besides the district court is a probate court; has jurisdiction over the estates of deceased persons, guardianships, and administrations. By the act of Congress in relation to the question of citizenship, it has appellate jurisdiction of cases tried by the Dawes Commission. It has original jurisdiction of every class of misdemeanors, and appellate jurisdiction of such offenses as may be prosecuted before the United States commissioners. It has appellate jurisdiction of all civil suits tried by the commissioners in which the judgment exceeds $20. The commissioner's court has exclusive jurisdiction of all civil suits where the amount in controversy does not exceed $100, and concurrent jurisdiction with the district court of all matters arising out of contracts where the amount in controversy does not exceed $300.

Separate systems of law and equity prevail here, and the judge is both a chancellor and the presiding judge in a court of law; and the three judges in the Indian Territory constitute a court of appeals. Besides all this the judge has to marry people, appoint notaries public, make and grant requisitions for fugitives, appoint commissioners and constables, and designate the commissioners' districts, and do a great many other legal, legislative, and executive chores not imposed on any other judicial officers under the sun. He fixes the times of holding his own court and the duration of the term.

In this district, for instance, eight months are given to the trial of causes; January and June to the appellate court work; July and August are generally devoted to the work which devolves upon him as a chancellor.

In the northern district of the Indian Territory, for the fiscal year ending July 1, 1896, there were 78 convictions, 9 acquittals, 117 dismissed, and 49 miscellaneous convictions; in criminal cases, 3 acquittals, and 40 discontinued and dismissed, making a total of 295 criminal cases disposed of.

In the central district there were 231 criminal cases disposed of, 97 convictions and 27 acquittals, and 25 dismissed and quashed.

In the southern district there were 352 cases disposed of, 151 convictions, 21 acquittals, and 179 dismissed and quashed.

On the 1st of July, 1896, the criminal cases pending in the northern district were 206, in the middle district, 267, in the southern district, 299.

The civil suits commenced and terminated during the fiscal year, and those still pending July 1, 1896, are as follows: Commenced in the northern district 430, in the central district 355, in the southern

district 772. There were terminated in the northern district 380, in the central district 282, in the southern district 733.

There were pending July 1, 1896, in the northern district 722, in the central district 362, in the southern district 595.

These figures are taken from the last annual report of the Attorney-General, and will give you a fair idea of the work of these courts.

There will be a considerable increase of higher felonies for this fiscal year, because on the 1st of September, 1896, these courts acquired full jurisdiction of all such offenses which were heretofore prosecuted in the courts in Arkansas and Texas.

The proposition to put all the litigation which may arise in the Indian Territory, without regard to citizenship, in the United States courts in the Indian Territory has been discussed pretty generally here. To do that would increase the work of these courts a great deal, and you would necessarily have to increase the number of judges. Two additional judges, I suppose, would be sufficient. As the courts are now constituted, I feel satisfied that we can handle the business in this district. The dockets in the northern district, however, are overloaded. The consensus of opinion in this country is that the tribal courts are wholly inefficient. I do not know enough about them, however, to have any fixed opinion on the subject. The system under which these courts operate is a liberal and a flexible one, and I have found the juries to be efficient, intelligent, and courageous in the discharge of their duties in handling both the civil and the criminal business.

Quite a number of negroes living in this country, a much lower class than the Indians, have been prosecuted in my court, and have been litigants on the civil side of the docket, and they have invariably fared as well at the hands of the juries as any class of people.

I am of opinion that the poor and the helpless and the illiterate Indian will fare better in the United States court than he does in the tribal courts. The wealthy, intelligent Indian and the mixed bloods can take care of themselves in any court, and they will be apt to obtain all they are entitled to. I am inclined to the opinion that the pending measure would be beneficial to the Indian country, and would lead ultimately to a solution of the troublesome questions presented by the Indian Territory.

Very respectfully, your obedient servant,

C. B. KILGORE.

Hon. R. F. PETTIGREW,
United States Senate, Washington, D. C.